

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 335 of 1985
with
CIVIL APPLICATION No 3722 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAVINDRA C MEHTA

Versus

MANEKCHOWK CO-OP BANK LTD.

Appearance:

MR ARUN H MEHTA for Appellant
MR PG DESAI FOR MR GN DESAI for Respondent No. 1
MR ASHOK L SHAH for Respondent No. 2
UNSERVED for Respondent No. 3
SERVED for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH
Date of decision: 27/08/97

ORAL JUDGEMENT

This appeal is directed against the order dated August 20, 1985 passed by the City Civil Court, Ahmedabad below application ex.33 under Rule 83 of the City Civil

Court Rules, 1961, joining the appellant as a third party-defendant in Civil Suit No. 1136 of 1983.

2. The suit came to be filed by respondent no.1 Manek Chowk Co-operative Bank Limited for recovery of Rs. 1,56,723.75 ps. with costs and interest from respondent no.2 M/s. Hasmukhlal Ambalal, which was the sole defendant at the time of institution of the suit. The suit was based on the ground that the defendant had accepted various Hundis drawn by respondent no.3 herein Bhalakia Mills Co. Limited, and that the defendant had accepted the said Hundis and therefore, was liable to pay the amounts of Hundis.

3. The defendant came out with the case that the said Hundis were accepted by it in consideration of the goods sold to it by respondent no.3-Company, but immediately on the next day when the defendant went to take delivery of the said goods from the respondent, it was found that the goods were not as per the contract and order placed by the defendant. The defendant therefore, returned the goods to respondent no.3 and the Chairman and Director of respondent no.3-Company Shri Ravindra Chinubhai Mehta (appellant herein) assured the defendant that they had cancelled the contract and that they would not draw any funds on the basis of any Hundi drawn by respondent no.3 and accepted by the defendant, and that they would intimate the Bank concerned and that the defendant would not be liable for the said Hundis.

4. In view of the aforesaid defence put up by the defendant, it submitted that in case it is held liable to pay the suit amount to the plaintiff on the basis of the said Hundis, it is entitled to contribution of indemnity from respondent no.3 as drawer of Hundis and also the present appellant who is Chairman & Director of the said Company at whose instance the said Hundis were accepted by the defendant. The defendant also submitted that the Company and its Chairman & Director are also liable for any fraud and/or breach of contract if the defendant is made liable to pay anything to the plaintiff in the present suit. On the aforesaid ground, the defendant filed an application under Rule 83 of Ahmedabad City Civil Court Rules, 1961 for taking out third party proceedings against respondent no.3 and the present appellant. Notice was issued to the said third parties.

5. The appellant is aggrieved by the order dated August, 20, 1985 whereby the City Civil Court, after hearing the parties, including respondent no.3 and the present appellant, passed the order under the aforesaid

Rule 83 and respondent no.3 and the appellant have been joined as third parties in the present suit.

6. The sum and substance of the arguments on behalf of the appellant before the trial court was that the appellant was not acting in personal capacity, but was acting in the capacity of Chairman & Director of the respondent No. 3-Company and therefore, he should not be treated as a third party and that at the most, respondent no.3 would be a third party, which is now in liquidation.

7. The trial court has however rightly observed that whether the appellant is personally liable or not in view of the allegations made by the defendant or whether the appellant was acting only for and on behalf of respondent no.3-Company, is a matter which can be gone into after the evidence is led and the suit is finally decided. No ground is made out to interfere with the order passed by the trial court. It is, however, clarified that the City Civil Court, Ahmedabad, shall proceed with the hearing of the suit without being influenced by the observations made in the order under appeal.

8. Subject to the above clarification, the appeal is hereby dismissed with no order as to costs.

9. Since the main appeal is dismissed, the Civil Application does not survive and the same is also disposed of. Rule is discharged in Civil Application.

Amp/-